

04-CV-02019-CMP

SEP 24 2004 MR

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CV04-2019

Case No.:

vs.

**SEAMEN'S COMPLAINT IN REM AND
IN PERSONAM FOR WAGES AND
PENALTIES--ALL WITHOUT PAYMENT
OF COSTS, 28 U.S.C. § 1916**

JOHN W. MERRIAM
4005 20th Avenue West, Suite 110
Seattle, WA 98199
(206) 729-5252 • FAX (206) 729-1012

1 4. The in personam defendants herein are individuals, a corporation, and
2 another form of business entity unknown to the plaintiffs that exist under and by the
3 virtue of the laws of a state of states unknown to plaintiffs and at all times herein
4 mentioned were acting by and through their officers, agents, servants, employees and
5 representatives, and have principal places of business or are doing business in the
6 Western District of Washington.

7 5. The F/V Alliance is a fishing vessel, documented by the United States,
8 official number 1029958. Said vessel has its home port in the Western District of
9 Washington or will be found in the Western District of Washington during the
10 pendency of this action. During all times herein mentioned said vessel was owned or
11 bareboat chartered by the defendants, and was engaged in maritime commerce.

12 6. In 1998, the defendants hired the Davies to operate defendant vessel as
13 master and crewmember, respectively. The plaintiffs manned the vessel continuously
14 until she was seized in March 2004 in the Pacific Islands by a U.S. Marshal.

15 7. On November 21, 2000, plaintiffs contracted with the defendants to
16 purchase defendant vessel. The plaintiffs agreed to forego receipt of their wages while
17 operating the vessel, in order to earn the downpayment for her purchase. Plaintiffs
18 forewent in excess of \$50,000 in wages, said money being held by the defendants and
19 applied toward the downpayment for purchase of the vessel.

20 9. The defendants had no intention of selling the vessel to the plaintiffs.
21 Rather, the plaintiffs were tricked into taking care of the vessel while defendant
22 Norman Smith was in prison.

23 10. The defendants interfered with the plaintiffs' attempt to complete the
24 purchase of the vessel by interfering with refinancing, in constructive breach of the
25

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1 contract for sale. The plaintiffs repudiated the contract for sale of the vessel on
2 January 5, 2003 and demanded their earned wages. Said demand was denied by
3 defendants.

4 11. Defendants' failure to pay vessel obligations caused the vessel to be seized
5 in Fiji in March 2004. The defendants forced the plaintiffs off the vessel, without
6 funds. Plaintiffs remain in Fiji to this day, destitute.

7 12. Defendants filed a lawsuit against the plaintiffs in Kitsap County Superior
8 Court for the State of Washington, cause number 04 2 008702. The defendants---
9 plaintiffs in the superior court case---sued the plaintiffs in this case for conversion of
10 fishing proceeds and breach of contract. The Kitsap County Superior Court purported
11 to 'consolidate' the plaintiff's claim of lien against defendant vessel, filed with the
12 National Vessel Documentation Center.

13 13. The Kitsap County Superior Court lawsuit is unfounded, and a thinly-
14 disguised attempt by defendants to avoid their obligation to pay wages to the plaintiffs
15 that were withheld based upon the now-repudiated contract for purchase of the vessel.

16 14. Plaintiffs claim Washington State law double wage penalties, and attorney
17 fees and costs under the general maritime law as well as state statute.

18
19
20 WHEREFORE, plaintiffs pray judgment against the defendants as follows:

- 21 1. For a declaration that the plaintiffs holds claim to a preferred maritime
22 lien against the defendant vessel, her engines, machinery, appurtenances
23 and cargo;
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2. For arrest, condemnation and sale of the defendant vessel including her engines, machinery, appurtenances and cargo;
3. For earned wages;
4. For such special damages, including found, as may be shown by the proofs herein;
5. For double wage penalties;
6. For pre-judgment interest on all claims as is in the law provided;
7. For costs of suit and reasonable attorney fees;
8. For such other and further relief, including punitive damages, as is met and just in the circumstances.

DATED this 23rd day of September 2004.

By: 

John Merriam, WSBA#12749
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I am the attorney for the plaintiffs in this action and have knowledge of the matters asserted in the above complaint based upon information provided by the plaintiffs.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the allegations of the above complaint are true and correct to the best of my knowledge and belief.

Dated at Seattle, Washington this 23rd day of September 2004.


John Merriam

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